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PANG KWEE YIN

v.

TEH SEW WAN

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HIGH COURT MALAYA, KUALA LUMPUR
YEOH WEE SIAM J
[PETITION NO: 33-521-2011]
13 JANUARY 2012

C ***CIVIL PROCEDURE:*** *Summary judgment - Questions of fact - Whether arose - Whether case regarding validity of marriage involved questions of fact - Whether suitable for recourse to O. 14A - Rules of the High Court 1980 O. 14A*

D ***FAMILY LAW:*** *Marriage - Registration of - Marriage registered under the Civil Marriage Ordinance 1952 - Whether deemed valid under the Law Reform (Marriage and Divorce) Act 1976, s. 4*

FAMILY LAW: *Marriage - Customary marriage - Marriage not registered - Whether valid - Law Reform (Marriage and Divorce) Act* E *1976, ss. 4 & 34*

The petitioner filed an application under O. 14A of the Rules of the High Court 1980 for a declaration that her marriage to one Wong Yet Long (now deceased) is a valid marriage in fact and F law and that the subsequent customary marriage between Wong Yet Long and the respondent contravened the Civil Marriages Ordinance and was not valid under the Law Reform (Marriage and Divorce) Act 1976. The issues for consideration were as follows, namely (a) whether this matter involved questions of fact and was G therefore unsuitable to have recourse to O. 14A of the Rules of the High Court 1980, that is without the full trial of the action; (b) whether the marriage between the petitioner and Wong Yet Long was valid; (c) the validity of the customary marriage between the respondent and Wong Yet Long.

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Held (allowing the petition):

(1) This case is a fit and proper case to be determined on a question of law under O. 14A of the Rules of the High Court 1980. The question of law may be determined without the

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witnesses being called, thus saving judicial time and resources as well as additional costs to be incurred by both parties. The issue to be determined was clear and it was a simple matter of construction of the Civil Marriage Ordinance 1952 and the Law Reform (Marriage and Divorce) Act 1976 and its effect on the respondent's alleged customary marriage. This was a plain and obvious case which need not and should not go for full trial with *viva voce* evidence. (para 38)

(2) The petitioner's marriage to Wong Yet Long was registered under the Civil Marriage Ordinance and thus valid under the Law Reform (Marriage and Divorce) Act 1976 as s. 4 of the Law Reform (Marriage and Divorce) Act 1976 was enacted to save subsisting marriages by deeming such marriages to be registered under the Law Reform (Marriage and Divorce) Act 1976. (para 43)

(3) Since there was no evidence that the marriage of the petitioner and Wong Yet Long was dissolved, the marriage remains valid and intact. (para 44)

(4) It was an undeniable fact that the customary marriage between Wong Yet Long and the respondent was never registered under the Civil Marriage Ordinance. Since the alleged customary marriage was not valid under the Civil Marriage Ordinance, s. 4 of the Law Reform (Marriage and Divorce) Act 1976 could not be invoked to confer validity on such customary marriage. (paras 5 & 46)

(5) Section 34 could not be invoked to validate the respondent's marriage which was invalid to begin with. Section 34 is not a validating provision for an invalid marriage. (para 49)

Case(s) referred to:

Shong Mor Sdn Bhd v. Cayman Development (Kedah) Sdn Bhd [2009] 9 MLJ 175 ***(refd)***

Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd [2007] 6 CLJ 741 CA ***(refd)***

Hue Chooi Yin v. Chew Pit King [2010] 1 LNS 998 HC ***(foll)***

Kerajaan Negeri Trengganu v. Petroliam Nasional Bhd & Anor [2003] 1 MLJ 260 ***(refd)***

Leong Wee Shing v. Chai Siew Yin [2000] 1 CLJ 439 HC ***(not foll)***

A **Legislation referred to:**
Civil Marriage Ordinance 1952, ss. 3(1), 4(1), (2), 5(1), (2), 6(a), (b), (c)
Law Reform (Marriage and Divorce) Act 1976, ss. 4, 34
Rules Of The High Court 1980, O. 14A

B *For the petitioner - Wh Kan; M/s Wh Kan*
For the respondent - Gurmeet Singh; M/s Jagjit Singh & Co

*[**Editor's Note**: On 1 June 2012, the Court of Appeal allowed the appeals pertaining to the petitions referred to in this case and remitted the matter back to*
C *the High Court for trial [Civil Appeals No. W-02-3256-12/2011 and W-02(IM)-3257-12/2011].*

Reported by EM Goh

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JUDGMENT

Yeoh Wee Siam J:

Background Facts

E **[1]** This judgment is in respect of the two appeals filed on 21 December 2011 against the whole of my decision made on 8 December 2011 regarding encls. 13 and 6.

[2] Briefly, the facts of the case are as follows:

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[3] The petitioner and Wong Yet Long ("WYL") (now deceased) were married in 1966 under a Chinese customary marriage, including a tea ceremony. On 24 October 1973, the marriage of the petitioner to WYL was registered under the Civil
G Marriage Ordinance 1952 ("the CMO"). The petitioner and WYL had four children now ages 44, 42, 41 and 37 years.

[4] The respondent pleaded in her answer and amended answer (encls. 9 and 11) that on 8 March 1981 she married WYL in a
H tea ceremony under Chinese custom ("the customary marriage") and they had two children, namely:

(i) Wong Shee Kai, born on 12 December 1981; and

(ii) Wong Shee Hau, born on 5 August 1983.

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[5] The alleged customary marriage between the respondent and WYL was never registered under the CMO. Neither was it registered under the Law Reform (Marriage and Divorce) Act 1976 ("the LRA").

[6] On 28 September 2004 WYL passed away. A

[7] On or about 17 March 2006, the respondent and two others filed a civil suit ie, No. D5-22-348-06 at the High Court Malaya, Kuala Lumpur. This action was later withdrawn by consent. B

[8] On or about 21 September 2006, the respondent filed a Petition for Letters of Administration No. S5-31-579-2006 at the High Court Malaya, Kuala Lumpur. That civil suit is currently pending appeal on three interlocutory matters at the Court of Appeal. C

[9] At the outset of the hearing before me of encls. 13 and 6, counsel for the respondent applied for postponement of this case on the ground that the three interlocutory matters for case No. S5-31-579-2006 are pending settlement before the hearing at the Court of Appeal. D

[10] I did not allow the postponement as the matters before the Court of Appeal are regarding letters of administration and inheritance and are totally different from the issue before this court which is regarding the legal status of the alleged customary marriage between the respondent and WYL. In my opinion, by proceeding with the hearing on encls. 13 and 6, any decision made by this court would determine the status of the alleged customary marriage and bring legal certainty to the situation between the parties. E F

Enclosure 6

[11] In encl. 6, which amended the petition of the petitioner in encl. 1, the petitioner prayed, *inter alia*, for the following reliefs: G

(a) A declaration that the marriage between the petitioner WYL is a valid marriage in fact and in law.

(b) A declaration that the customary marriage on 8 March 1981 between the respondent and WYL contravenes s. 4 of the CMO and is null and void; H

(c) A declaration that, following from the declaration in para. 2 above, the customary marriage between the respondent and WYL on 8 March 1981 is not valid under s. 4 of the LRA; I

A (d) Costs;

(e) A consequential order which would bring effect and relief to the petitioner regarding this application.

B **Enclosure 13**

[12] In encl. 13, the petitioner prayed, *inter alia*, for the following reliefs:

(a) that this Honourable Court is required to determine a question
C of law whether the alleged customary marriage on 8 March 1981 between the respondent and WYL is valid pursuant to the CMO and/or s. 4 of the LRA;

(b) that after determining the legal question in para. 1 above, whether the respondent and/or the children of the respondent
D have the right of inheritance and succession in the estate of the deceased WYL following the death of WYL, intestate;

(c) costs;

E (d) any consequential order which would bring effect and relief to the Petitioner regarding this application.

Enclosures 9 And 11

[13] Enclosure 9 is the affidavit in reply of the respondent to the
F amended petition of the petitioner (encl. 6). Enclosure 11 is the answer of the respondent to the amended petition (encl. 6). In encl. 11, the respondent applied for the amended petition to be dismissed with costs since it is baseless, and for the customary marriage of the respondent and the deceased husband which took
G place on 8 March 1981 to be declared as valid in law and that the respondent is the valid wife of the deceased husband.

Joint Hearing

H **[14]** I heard encl. 13 together with encl. 6. Any decision by the court on encl. 13 would also determine encl. 6.

Decision

[15] After considering the pleadings, affidavits, and submissions of
I both parties, I allowed the application in encl. 13, and consequentially I also allowed the amended petition in encl. 6. I dismissed the respondent's application in encls. 9 and 11.

[16] I further ordered that costs be borne by the respective parties. A

Grounds For My Decision

Application Under Order 14A B

[17] The petitioner filed the application in encl. 13 pursuant to O. 14A of the Rules of the High Court 1980 ("the RHC") for disposal of the case on point of law.

[18] Order 14A of the RHC provides as follows: C

ORDER 14A
DISPOSAL OF CASE ON POINT OF LAW

Determination of questions of law or construction.

(O. 14A, r. 1). D

1. (1) The Court may upon the application of a party or of its own motion determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that - E

(a) such question is suitable for determination without the full trial of the action; and

(b) such determination will finally determine the entire cause or matter or any claim or issue therein. F

(2) Upon such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

(3) The Court shall not determine any question under this Order unless the parties have had an opportunity of being heard on the question. G

(4) The jurisdiction of the Court under this Order may be exercised by a Registrar.

(5) Nothing in this Order shall limit the powers of the Court under Order 18, rule 19, or any other provision of these rules. H

Manner in which applications under rule 1 may be made (O. 14A, r. 2).

2. An application under rule 1 may be made by summons or motion or (not withstanding Order 32, rule 1) may be made orally in the course of any interlocutory application to the Court. I

[19] The questions are:

(a) whether this cause or matter involves a question of law;

(b) whether such question is suitable for determination without the full trial of the action; and

(c) whether such determination will finally determine the entire cause or matter or any claim or issue therein.

[20] Counsel for the respondent submitted that it is trite law that if a question of fact is involved, it is inappropriate or unsuitable to have recourse to O. 14A of the RHC (see *Shong Mor Sdn Bhd v. Cayman Development (Kedah) Sdn Bhd* [2009] 9 MLJ 175). He also cited *Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd* [2007] 6 CLJ 741 where the Court of Appeal held that a factual question should not be determined summarily under an O. 14A procedure, but should be determined in a full trial.

[21] Counsel for the respondent submitted that in order for the court to determine the question of law as proposed by the petitioner in encl. 13, it is important for this Honourable Court to first determine the question of fact ie, whether there was a Chinese customary marriage between the respondent and deceased, WYL, on 8 March 1981. In order to ascertain the validity of the respondent's Chinese customary marriage to the deceased, oral evidence would have to be adduced at the full trial by the respondent and witnesses who attended the said marriage on 8 March 1981. He relied on *Hue Chooi Yin v. Chew Pit King* [2010] 1 LNS 998, a previous case decided by me where I had conducted a full trial, and heard all witnesses before deciding on the question whether there was a Chinese customary marriage between the petitioner in that case and the deceased husband.

[22] Regarding this point, I have to clarify here that in *Hue Chooi Yin (supra)* I was not the judge who heard the O. 14A application and decided that a full trial was necessary. For the purpose of deciding the present case, I am not bound by the decision of the former judge on the matter.

[23] In the present case, encl. 13 is a new application under O. 14A of the RHC put before me. It is therefore incumbent upon this court to decide, on the merits of this case, whether this is a fit and proper case to be determined on a question of law, without a full trial.

[24] For a better understanding of the law governing this matter, I would now set out the following relevant statutory provisions:

CMO Provisions

[25] The long title of the CMO states:

> An Ordinance to provide for the solemnization and registration of monogamous marriages by Registrars of Marriages.

[26] Under s. 3(1) of the CMO, all marriages solemnized in accordance with the provisions of the Ordinance shall be good and valid for all purposes.

[27] Section 4, 5 and 6 of the CMO provide as follows:

> Marriage to be monogamous.
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> 4. (1) A male person married in accordance with the provisions of this Ordinance, shall be incapable, during the continuance of such marriage, of contracting a valid marriage with any third person, whether as principal or secondary wife.
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> (2) A female person married in accordance with the provisions of this Ordinance, shall be incapable, during the continuance of such marriage, of contracting a valid marriage with any third person either as his principal or as his secondary wife.
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> Disabilities.
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> 5. (1) If any male person lawfully married under this Ordinance shall thereafter during the continuance of such marriage contract a union with a woman which but for such marriage would confer rights of succession or inheritance upon such woman or upon issue of such union, no issue of such union shall be legitimate or have any right of inheritance in or succession to the estate of such male person, and no such woman shall have any such right by reason of the death intestate of such male person.
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> (2) Nothing in this section shall affect the liability of any person to pay such maintenance as may be directed to be paid by him under any written law.
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> Continuance of marriage.
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> 6. Every marriage duly solemnized under this Ordinance shall continue until dissolved in any of the following manners:
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> (a) by the death of one of the parties; or

A (b) by order of a Court of competent jurisdiction; or

(c) by a declaration made by a Court of competent jurisdiction that the marriage is null or void.

LRA Provisions

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[28] The long title of the LRA states, *inter alia*:

An Act to provide for monogamous marriages and the solemnisation and registration of such marriages;

C **[29]** Section 4 and 34 of the LRA provide as follows:

4. Subsisting valid marriages deemed to be registered under this Act and dissoluble only under this Act.

(1) Nothing in this Act shall affect the validity of any marriage D solemnised under any law, religion, custom or usage prior to the appointed date.

(2) Such marriage, if valid under the law, religion, custom or usage under which it was solemnised, shall be deemed to be registered under this Act.

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(3) Every such marriage, unless void under the law, religion, custom or usage under which it was solemnised, shall continue until dissolved:

(a) by the death of one of the parties;

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(b) by order of a court of competent jurisdiction; or

(c) by a decree of nullity made by a court of competent jurisdiction;

G 34. Legal effect of registration.

Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.

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[30] In this case, it is undisputed that the petitioner and WYL did register their marriage under the CMO. This is evidenced by the marriage certificate issued by the Registrar of Marriages for Negeri Sembilan on 24 October 1973. Thus, at all times WYL I was legally married to the petitioner.

[31] In the later part of this judgment I would go into greater detail on the determination of the question of law put before this court. Suffice for now for me to state here at this stage that for as long as the marriage between the petitioner and WYL is still valid and not dissolved during the lifetime of WYL, then under s. 4(1) of the CMO WYL is incapable during the continuance of such marriage to contract a valid marriage with any third person, including the respondent.

[32] Thus, the question of fact whether there is or there is no Chinese customary marriage ceremony between the respondent and WYL does not have to be determined by a full trial by this court by calling all the witnesses to the ceremony. That would unnecessarily prolong the trial and serve no purpose because finally the court would still have to decide on a question of law, namely, the legal status or validity of the marriage between the petitioner and WYL, and of the alleged customary marriage between the respondent and WYL. A determination of this question of law at this stage would finally determine the entire cause or matter or any claim or issue therein.

[33] At this stage, based on Affidavit evidence alone, it is not denied by the respondent that her alleged marriage to WYL was never registered under the CMO or the LRA. For as long as there is no registration of such marriage under the law, and in the light of the statutory requirements for registration of a monogamous marriage under the CMO and/or the LRA, the alleged customary marriage of the respondent to WYL is not valid.

[34] The respondent averred that her alleged Chinese customary tea ceremony was held on 8 March 1981. She relied on exh. TWS1 and TWS2 of her affidavit to support her allegations of customary rites and marriage. As submitted by counsel for the petitioner, a perusal of the photographs relied on by the respondent does not show that there was a customary marriage ceremony at all. At best, the photographs are evidence to show that the respondent and the late WYL knew each other but definitely did not undergo any customary marriage ceremony. There are no affidavits filed by any third party who has witnessed the alleged customary marriage.

[35] In any event, even if the respondent does have witnesses to the customary marriage ceremony, such witnesses, if called, would merely support the respondent's own contention that the customary ceremony was held on 8 March 1981.

[36] I agree with the submissions of counsel for the petitioner that the fact whether there was an actual customary marriage on 8 March 1981 or there was no such ceremony at all, is not material or an issue in the light of the provisions of the CMO, in particular ss. 3, 4, 5 and 6 of the CMO.

[37] Based on affidavit evidence, I was satisfied that there is no proof of a Chinese customary marriage between the respondent and WYL. Notwithstanding this, even if the benefit of the doubt is to be given to the respondent, and the court proceeds on the basis that there is such a Chinese customary marriage between the respondent and WYL, the alleged marriage is not valid under the laws. It is null and void and of no effect under ss. 3, 4, 5 and 6 of the CMO and under ss. 4 and 34 of the LRA.

[38] I therefore ruled that this case is a fit and proper case to be determined on a question of law under O. 14A of the RHC. The question of law can be determined without the witnesses being called, thus saving judicial time and resources as well as additional costs to be incurred by both parties. The issue to be determined is clear and it is a simple matter of construction of the CMO and LRA and its effect on the respondent's alleged customary marriage. This is a plain and obvious case which need not and should not go for full trial with *viva voce* evidence.

[39] In *Kerajaan Negeri Trengganu v. Petroliam Nasional Bhd & Anor* [2003] 1 MLJ 260 Arifin Zakaria (as His Lordship then was) stated at p. 261:

> It should of course be noted that under O. 14A r. 1(2) of the RHC, the court has a wide discretion. It may upon determination of the question of law or construction dismiss the action or make such order or judgement as it thinks just. Thus, the action may be disposed of without a full trial and the judgement order will have the same force as the judgment or order after a full trial of the action.

[40] In my view, by exercising my judicial discretion, the application in encl. 13 may be determined under O. 14A of the RHC, thus leading to the final disposal of encl. 6. The outcome of the court's decision on encl. 13 would be the same as for encl. 6 since both applications are applying for the same reliefs.

Whether The Alleged Customary Marriage Of The Respondent And WYL Is Valid Under The CMO And The LRA

[41] The CMO provides for monogamous marriages. Thus, when WYL married the petitioner and such marriage is registered under the CMO on 24 October 1973, WYL is incapable of contracting another marriage with the respondent on 8 March 1981 under s. 4(2) of the CMO.

[42] The alleged customary marriage between the respondent and WYL is invalid. In fact, WYL would be committing bigamy under s. 33 of the CMO and an offence under s. 494 of the Penal Code [see also *Hue Chooi Yin (supra)*].

[43] The alleged customary marriage was never registered under the CMO. On 1 March 1982 the LRA came into force and the CMO was repealed (see s. 109 and the Schedule of the LRA). Section 4 of the LRA was enacted to save subsisting valid marriages by deeming such marriages to be registered under the LRA.

[44] There is no evidence that the marriage of the petitioner and WYL was dissolved. There is also no evidence that during the lifetime of WYL the alleged customary marriage of the respondent was registered under the LRA. Without such registration, the question now is whether the marriage can be deemed to be registered under the LRA. I am of the view that since the alleged customary marriage of the respondent is not valid under the CMO, it cannot be deemed to be registered under s. 4 of the LRA because s. 4(2) of the LRA only allows a valid marriage, whether contracted under law or custom, amongst others, to be deemed registered.

[45] Counsel for the respondent submitted that the validity of the respondent's marriage to WYL is not affected by s. 4 of the LRA which states:

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> 4. (1) Nothing in this Act shall affect the validity of any marriage solemnized under any law, religion, custom or usage prior to the appointed date.

[46] With respect to counsel for the respondent, s. 4(1) of the LRA clearly states that the LRA shall not affect the validity of any marriage solemnized before 1 March 1982. This is premised on the condition that such previous marriages are already valid under any law or custom, amongst others. In this case, the respondent's alleged customary marriage is not valid under the CMO. Therefore, s. 4(1) of the LRA cannot be invoked to confer validity on such customary marriage.

[47] Counsel for the respondent relied on s. 34 of the LRA and *Leong Wee Shing v. Chai Siew Yin* [2000] 1 CLJ 439 where RK Nathan J held:

> Pursuant to Section 34 of the Act, the Plaintiff did not even have to show that there was a marriage according to Chinese customary rites so long as there was a marriage. Section 34 of the Act refers to the existence of "any" marriage and does not define the term "marriage". Thus, the term "marriage" therein should not be given its ordinary everyday meaning. The fact that the Plaintiff and the Deceased had sent wedding invitation cards to their relative and friends inviting them to witness the wedding and also to attend a "tea drinking" ceremony as well as a wedding dinner showed that an act of marriage had taken place on 19 November 1995.

[48] With respect to RK Nathan J, I do not think that the above is envisaged by s. 34 of the LRA. Section 34 of the LRA is not about whether there is an act of marriage. It is about the legal effect of registration of a marriage under the LRA. In the present case, the alleged customary marriage of the respondent is, from the start, not valid under the CMO.

[49] Section 34 of the LRA cannot be invoked here by the respondent to validate her invalid alleged customary marriage. Any registration under the LRA does not confer validity to an invalid marriage. Registration does not change the validity or invalidity of a marriage under s. 34 of the same Act. In this case, since I have held that the alleged customary marriage is invalid under the CMO, and therefore cannot be deemed to be registered under s. 4 of the LRA, there is therefore no registration under the LRA.

Any registration, by virtue of s. 34 of the LRA, cannot render the invalid customary marriage as valid. It must be stressed here that s. 34 is not a validating provision for an invalid marriage.

[50] This case is almost similar to *Hue Chooi Yin (supra)* where the alleged customary marriage of the Hue Chooi Yin, the petitioner, to the late CCM was never registered under the CMO and the LRA during the lifetime of CCM, and his marriage to Soo Poi Eng. In that case, I had gone into great length to state the legal principles to be applied in order to determine the legal status of the alleged customary marriage. I finally arrived at the conclusion that the alleged customary marriage of Hue Chooi Yin to CCM is not valid in law. Counsel for the petitioner in the present case has cited several excerpts of that case for the purpose of this case. I now re-affirm the same legal principles in *Hue Chooi Yin (supra)* which can apply *mutatis mutandis* to this case.

[51] Based on the above, it follows that with regard to question 2 of encl. 13, under s. 5 of the CMO, and now, with the repeal of the CMO by the LRA, under the current relevant laws applicable to inheritance and succession rights, the respondent and her two children from the alleged customary marriage have no rights of inheritance or succession on the property of the deceased WYL and the distribution of such property.

[52] For the above reasons, I therefore ordered accordingly.